

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RENALDO POKE,

Defendant and Appellant.

B300190

(Los Angeles County  
Super. Ct. No. YA097868)

APPEAL from a judgment of the Superior Court of Los Angeles County. Hector Guzman, Judge. Affirmed as modified.

Helen Hoeffel, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Michael Keller and Wyatt E. Bloomfield, Deputy Attorneys General, for Plaintiff and Respondent.

---

On June 24, 2019, a jury found appellant Reynaldo Poke guilty of burglary, robbery, and domestic violence after he broke into his girlfriend's house, stole her cell phone, and physically injured her. In addition to the charges, the People alleged appellant had sustained two prior strike convictions under Penal Code section 1170.12, subdivision(b)-(d)<sup>1</sup>, which were also serious felony convictions under section 667, subdivision (a)(1). The People also alleged appellant had served two prior prison terms under section 667.5, subdivision (b).

After the verdict, appellant admitted the two prior prison terms and two separate burglary convictions from February 11, 2009, and April 6, 2011. The trial court sentenced appellant to the upper term of six years on the robbery, doubled for one prior strike, plus a consecutive five-year term for one prior serious felony conviction. The trial court added a consecutive one-year term for one of the prior prison terms. The court struck the other prior prison term enhancement. The court imposed but stayed sentences on the other two counts. In addition to the various fines and fees imposed as part of the sentence, the court imposed a \$500 domestic violence restitution fine pursuant to section 1203.097, subdivision (a)(5)(A). The total sentence of imprisonment was 18 years.

Appellant raises two issues on appeal, both of which the People concede.

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise stated.

**1. The One-Year Sentence for the Prior Prison Term Must Be Stricken Due to a Retroactive Change in the Law Enacted by Senate Bill 136.**

The determination whether a newly enacted statute applies to a case is a pure question of law reviewed de novo. (*In re Chavez* (2004) 114 Cal.App.4th 989, 994.)

The law in effect when appellant was sentenced provided for a one-year enhancement for each prior prison term served for “any felony” (§ 667.5, subd. (b).) Senate Bill No. 136, effective January 1, 2020, narrowed the law to require that the prior prison term be served “for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.” (Sen. Bill No. 136 (2019–2020 Reg. Sess.) § 1.)

Senate Bill No. 136 is retroactive to appellant’s sentence, which was not final when the law went into effect. (*People v. Winn* (2020) 44 Cal.App.5th 859, 872–873 [Senate Bill No. 136 applies to non-final judgments on appeal]; *People v. Lopez* (2019) 42 Cal.App.5th 337, 340–341[same].) Appellant served his prior prison terms for burglaries. He is entitled to the benefit of Senate Bill No. 136. We therefore strike the one-year enhancement imposed for his prior prison term.

**2. The \$500 Domestic Violence Restitution Fine Was Improperly and Must be Stricken.**

Whether the \$500 domestic violence restitution fine was appropriate is reviewed de novo where the order turns, as it does here, on the interpretation of a statute. (*People v. Henderson* (2018) 20 Cal.App.5th 467, 470.) Because we find this was legal, not discretionary error, appellant did not forfeit this claim by failing to object at sentencing. (*People v. Wall* (2017) 3 Cal.5th 1048, 1075.)

A trial court may impose the \$500 domestic violence restitution fine only when a defendant is “granted probation.” (§ 1203.097, subd. (a)(5)(A); *People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1520.) Here appellant was not granted probation; he was sentenced to state prison. The fine must be stricken.

**3. A Remand Is Not Required.**

Remand for a new sentencing hearing is unnecessary because the trial court has already exercised its discretion to impose the maximum sentence. (*People v. Buycks* (2018) 5 Cal.5th 857, 896, fn. 15; *People v. Lopez, supra*, 42 Cal.App.5th at p. 342 [“Because the trial court imposed the maximum possible sentence, there is no need for the court to again exercise its sentencing discretion.”].)

**DISPOSITION**

The one-year prison term previously imposed under Penal Code section 667.5, subdivision (b) is stricken, and the sentence is modified to an aggregate term of 17 years in state prison. The \$500 domestic violence restitution fine is stricken. Upon issuance of the remittitur, the trial court shall send an amended abstract of judgment to the Department of Corrections. The judgment is affirmed as modified.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

STRATTON, J.

We concur:

BIGELOW, P. J.

WILEY, J.